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Supreme Court Decisions

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FORCIBLE ENTRY AND DETAINER—DEED IN THE NATURE OF TESTAMENTARY DEVISE—EFFECT OF—*Dunham vs. Armitage, Administrator*—No. 13685—*Decided July 15, 1935*—*Opinion by Mr. Justice Hilliard.*

An action in forcible entry and detainer by Armitage as Administrator against Dunham, who claimed title and right of possession pursuant to a writing signed by decedent. The instruments signed and executed by decedent attempting to convey certain real estate to Dunham in trust by reserving in the decedent the right of revocation during her lifetime and provided further that upon her death that the real estate should become the absolute property of Dunham.

1. Where a party executes a deed reserving possession and control of the rents, issues and profits and the right to revoke same at pleasure and expressly states that if not revoked before her death that the real estate was to become the property of the grantee such clauses postponing the vesting of title until the death of the grantor make the instrument testamentary in character and was not effective for any purpose prior to the death of the grantor.—*Judgment affirmed.*

WORKMEN'S COMPENSATION—MEDICAL SERVICES NOT ALLOWABLE WHERE INJURY WAS NOT ACCIDENT WITHIN THE COMPENSATION LAW—*Morey Mercantile Co. et al. vs. Glynt*—No. 13735—*Decided July 15, 1935*—*Opinion by Mr. Chief Justice Butler.*

The Industrial Commission made an award for the payment of $100.00 to a doctor who attended an injured workman in the employ of the Morey Mercantile Co. The District Court confirmed the award.

The Industrial Commission found that the claimant failed to establish accidental injury as defined by law, but found that Dr. Bumpus, who attended the claimant, was justified in assuming because of a letter written to him by the insurance carrier, that the treatment was authorized by the carrier.

1. Injuries that are not accidental are not within the scope of the Workmen's Compensation Act and afford no basis for compensation under the Act.

2. A claim for medical services rendered to an injured employee at the instance of the employer or an insurance carrier, in cases where the injury is not caused by accident arising out of and in the course of the employment may be enforced in an independent suit, but cannot be allowed in a proceeding under the Workmen's Compensation Act.—*Judgment reversed.*

FRAUD AND DECEIT—DAMAGES—KNOWLEDGE OF FALSITY OF REPRESENTATIONS—EXCESSIVE DAMAGES—*Otis and Co. vs. Grimes*—No. 13449—*Decided July 22, 1935*—*Opinion by Mr. Chief Justice Butler.*

Ben Grimes sued Otis and Co. for damages, alleging that in December, 1927, the defendant induced the plaintiff to purchase for $15,400.00 1,000 shares of class "B" stock in the Allison Drug Stores Corporation by falsely representing that the corporation then was earning $2.00 per share on that stock. Judgment for $21,560.00, which included interest, was entered against the defendant below.

1. There was sufficient evidence establishing the falsity of the representations.

2. Actual knowledge of the falsity of the representations on the part of the defendant is not necessary. It is sufficient if the defendant made the representation in reckless disregard of its truth or falsity.

3. In a suit for damages for the purchase of stock induced by false and fraudulent representations, the measure of damages is the difference between the actual value of the property and what its value would have been had the representations been true.

4. Objection to an instruction cannot be urged unless rule number 7 is complied with.

5. In a suit for damages where the jury awarded damages for the full value of the stock purchased plus interest thereon and there was some evidence that the stock had some value, such finding cannot be sustained.

6. A verdict for such amount is excessive and requires reversing. —*Judgment reversed as to amount of damages. Cause remanded to determine only amount of damages.*

WORKMEN'S COMPENSATION ACT — SETTLEMENTS — REOPENING CASE—*Independence Coffee and Spice Co. and Continental Casualty Co. vs. W. M. Taylor and Industrial Commission of Colorado*—No. 13712—*Decided August 5, 1935*—*Opinion by Mr. Justice Bouck.*

In 1924 defendant in error sustained a compensable injury; a compromise settlement was made, approved by the Commission without formal hearing or findings of fact, and a release given to employer and insurer. The case was reopened ten years later on petition of claimant and a new award for permanent disability arising from said accident made, which was approved by the District Court and of which review is here sought.

1. Commission has power to reopen case on own motion under C. L. 21, Section 4484, Subsection 110.

2. Claim of error, mistake or change of condition was not proved.

3. A bona fide settlement is equivalent to an award or judgment reached on the evidence.—*Judgment reversed with directions.*

DIVORCE—SEPARATE MAINTENANCE—ADMISSION OF EXHIBIT—NEWLY DISCOVERED EVIDENCE—*Pierce vs. Pierce*—No. 13700—*Decided July 22, 1935—Opinion by Mr. Justice Hilliard.*

On trial of plaintiff's complaint for absolute divorce and defendant's cross-complaint for separate maintenance verdicts favorable to defendant were entered in the court below.

1. It was error to admit in evidence a letter from a third party, a woman, addressed to the plaintiff, where the evidence did not show that the letter ever reached the plaintiff or that he responded to it. Under such circumstances such letter was merely hearsay statements of a third person.

2. Since the case must be reversed for wrongful admission of the exhibit there is no occasion to examine the question as to whether or not the court erred in refusing to grant new trial.—*Judgment reversed.*

STATUTES—TITLE OF BILL—*Belle E. Dahlin vs. City and County of Denver*—No. 13503—*Decided August 5, 1935—Opinion by Mr. Chief Justice Butler.*

1. The title of the Act, "An Act Concerning Liability of Cities and Towns for Personal Injuries," provided that actions for personal injuries or death against cities of the first class must be commenced within two years from the occurrence of the accident. The title is appropriate and fairly germane to the subject matter expressed in the bill.

2. Section 158 of Article 8 of the Denver Charter providing that the City and County of Denver shall not be liable for damages unless notice be given within sixty days is not a statute of limitations and does not supersede or conflict with the general limitation statute of the State of Colorado which is applicable to actions against the City and County of Denver.—*Judgment affirmed.*

NEGOTIABLE INSTRUMENTS—PAYMENT TO PAYEE, AS AGENT OF INDORSEE, CONSTITUTES PAYMENT—JURORS—PREJUDICE—*Stockyards National Bank of South Omaha vs. Neugebauer*—No. 13754—*Decided August 5, 1935—Opinion by Mr. Justice Bouck.*

1. Payment to the payee of a promissory note is effectual as a discharge thereof, even after the payee had transferred the note to his indorsee, where the indorsee by its conduct had constituted the payee its agent in the matter, and the maker of the note had no acknowledgment of the indorsement.

2. Fact that a jury composed entirely of farmers and stockraisers returned a verdict in favor of the defendant, who also was a farmer and stockraiser, and against the plaintiff, which was a large city bank, does not of itself show prejudice on the part of the jury.—*Judgment affirmed.*